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ATTENTION is called to the twentieth annual report of Professor Langdell as dean of the Law School, submitted to the President of the University and recently published in the "Annual Reports of the President and Treasurer of Harvard College, 1 888-89." Beginning at page 111 of the book, the report exhibits the work of the School during the year. Then follow tables, showing the attendance during the last nineteen years; the division of the students into classes for the last twelve years, or since the three years' course was established; the result of admission examinations, and of examinations for degrees since 1877-8, or since the establishment of the three years' course and of admission examinations; the number of students receiving the honor degree since its establishment ten years ago,— a total number of seventy-seven; and finally the number of students who have been examined for a degree during the past twelve years in the studies of any year without having been members of the School during that year. The remainder of the report is concerned with the number of entries during the last nineteen years, the sources from which the students come, their age, and a discussion of the elements and causes of increase and change in the number and grade of the students in the last three years. The "Reports of the President and Treasurer of Harvard College" will be sent regularly to any graduate of Harvard College who sends notice of his desire to receive them, and presumably the Report for 1888-89 would be sent to any one else who has interest enough in the University to ask the Secretary of the University for one.

THE cases of *R.* v. *Brown*[1] and *People* v. *Moran*,[2] decided within a few days of each other last November, are worth comparing. In the former case the Court for Crown Cases Reserved in England flatly disapproved of the doctrine of certain earlier cases[3] that an effort to commit a crime under circumstances in which the crime could never be completed —*e. g.*, trying to pick an empty pocket — does not constitute a criminal attempt. The remark of the court in *R.* v. *Brown*

[1] 38 W. R. 95. [2] 7 N. Y. Supp. 582.
[3] *R.* v *McPherson*, Dears. & B. C. C. 197, and *R.* v. *Collins*, 9 Cox. C. C. 497.

was, however, made without any discussion of the point, and was apparently not necessary to the decision. In *People* v. *Moran* on the other hand, a majority of the Supreme Court of New York, First Department, adopted the view of the early English cases in opposition to what has been sometimes called the "American" doctrine,[1] resting their decision on common-law principles, as well as on grounds connected with the New York statutes, and supporting their conclusion by strong arguments.

WE hope that something will speedily be done to relieve the overcrowded docket of our Supreme Court. Partisanship has hitherto prevented it; for, although the necessity has long been apparent, neither side has been willing to place at the disposal of its opponents a large number of important judicial appointments which a reform would probably make necessary; but now that the executive and the legislative departments are in the hands of one party, there is reason to expect that something may at last be accomplished.

As is to be expected, there is much difference of opinion as to the best method of attaining the desired result. Some propose to go at once to the source of the trouble, and, by restricting the jurisdiction of the federal courts, to decrease the volume of the ever-increasing stream of litigation which threatens to overwhelm them. Others propose that the court sit *in banc* longer, or sit in divisions, so that more cases may be heard; but the former plan is inadequate, and the latter, although it would doubtless give relief, is strongly opposed by the justices, and there is little chance of its adoption. A much more satisfactory solution is offered by the Jackson Bill, the principal features of which were reproduced in a bill favorably reported in a recent Congress. By the provisions of this, all the original jurisdiction now exercised by the Circuit Courts is to be transferred to the District Courts, and each Circuit Court with two additional judges is to form an intermediate court of appeal. The right of appeal from these courts will be restricted so that the Supreme Court will not, for many years at least, be overcrowded. Not the least of the merits of this plan is its simplicity, and yet it embodies not only the relief of the Supreme Court, but a very decided improvement in the whole system of the lower courts. Probably Congress will adopt the main features of this plan when it considers the matter.

THE Supreme Court of Nebraska has recently decided, in the case of *Pullman Palace Car Co.* v. *Lowe*,[2] that a sleeping-car company must be held to the liability of an innkeeper for articles stolen from its passengers. This decision is an interesting addition to the discussion of the status of sleeping-car companies, especially in view of the unanimity with which the courts, on reasoning not always convincing, have heretofore reached the opposite conclusion whenever the point has arisen. These decisions are collected by Mr. Morris Gray, author of Gray on Communication by Telegraph, in an able and interesting article in 20 American Law Review, 159, which disapproves of them, and earnestly contends that a sleeping car should be regarded as an inn.

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[1] See *Com.* v. *McDonald*, 5 Cush. 365, and *People* v. *Jones*, 46 Mich. 441.
[2] 44 N. W. Rep. 226 (Dec., 1889).

The writer draws a strong argument from public policy; indeed, so far as the reason for the original liability of the innkeeper is to be found in the unprotected condition of the guest in a mediæval inn, the position of a modern sleeping-car passenger suggests an obvious analogy.

In *Pullman Palace Car Co.* v. *Lowe* the plaintiff on entering the car handed his overcoat, the article afterwards stolen, to the porter, who put it in the vacant upper berth of the plaintiff's section. The court calls attention in its decision to the fact that the coat was thus placed "in the care of the company's employés;" but this fact, except so far as it shows that the coat was *infra hospitium*, does not seem to be material to the decision or to the reasoning by which the court reaches it. It appears also that the district court had found as a conclusion of law that the company was negligent. The Supreme Court, however, does not refer to this, putting its decision on the broader ground, and it may be observed that the findings of fact appear hardly to justify the inference of negligence. The opinion deals with the suggestion that the sleeping car is to be likened to a lodging house, and with other objections to the theory that it is an inn, and comes to the conclusion that the services rendered by the company are essentially similar to those of an innkeeper. It is singular that in so important a case none of the cases which have reached the opposite result are mentioned.

It may be admitted that the supporters of the view of *Pullman Palace Car Co.* v. *Lowe* have successfully answered most of the arguments of their opponents and shown that the sleeping-car company is within the spirit of the rule as to the innkeeper's liability. The further question perhaps remains whether that liability — which has been said by a distinguished authority [1] not to "stand on mere reason, but on custom, growing out of a state of society no longer existing" — should not, in view of its nature and origin,[2] be narrowly construed and strictly applied rather than receive any liberal interpretation. It is worth observing (though Mr. Gray in his article distinguishes this case from that of a sleeping-car) that the courts refuse to hold a steamboat company liable as an innkeeper for property stolen from the state-room of a passenger.

In the course of a most interesting and instructive address on the "Law as a Profession," recently delivered in Cambridge, the Hon. Jeremiah Smith dwelt at some length upon the moral aspects of his subject, and among other things (unless we entirely misunderstood him) stated it to be his opinion that a lawyer was not justified in advocating a cause which he believed to be morally unjust, even although it was clearly "sound" on the existing law. This is very high moral ground, and there is, doubtless, much to be said in support of it. Perhaps the harsh and cynical opinions regarding the profession held by many intelligent laymen can only be removed by the practice of a particularly high code of morals in the profession. Nevertheless we doubt whether the opinion expressed by Judge Smith is theoretically the correct one. In a very proper sense the duty of an advocate is to assist in the administration of the law, and for at least two reasons the function which he performs is a necessary one. In the first place no tribunal is in a posi-

[1] Coleridge, J. in *Dansey* v. *Richardson*, 3 E. & B. 144, 159.
[2] See Holmes, Common Law, Lecture V.

tion to decide a cause until it has been informed of all the facts and arguments on each side. In the second place most laymen are unable thoroughly to understand and properly to present their legal rights. In this view it is difficult to perceive why an advocate is less justified in prosecuting an unjust claim founded on a clear right under the law, than a judge in rendering judgment on the same claim, provided he is guilty of no perversion of fact or misstatement of law. The duty of an advocate as an advocate, like that of a judge as a judge, is to assist in the administration of the law as he finds it, and if he finds it to be in any particular unjust or impolitic, his concern is not with his cause or his client, but with the Legislature. His moral duty to his client and to society is discharged when he has done his best to dissuade the former from pursuing his unjust right. There seems to be no real propriety in his setting himself up above the law which it is his duty to assist in enforcing. He may well say: "Who am I that I should condemn the rights given by the law of the land, and what am I if not an agent to secure for others the rights given them by that law? If those rights are unjust, the responsibility rests not on me, but on those who pursue and those who gave them." We are well aware, however, that this is not only a fundamental, but also a perfectly open question, and we are thankful for Judge Smith's remarks upon it. Those interested may obtain an introduction to the whole subject through discussions in the 3d and 12th volumes of the Cornhill Magazine, the 64th volume of the Edinburgh Review, and 7 Irish Law Reports, 312.

THAT highly respectable English journal, "The Spectator," is both surprised and shocked at the manner in which criminal trials are conducted in Illinois; and indeed the verdict in the Cronin murder case must at least be surprising to those who are unfamiliar with the changes in some of our States in the relative functions of judge and jury, and who have always supposed that a separation of the functions of the two branches of the tribunal is a fundamental principle of the English law. "The Spectator" remarks: "It is when we come to the trial itself that the Illinois method seems to Englishmen so singular and even so repulsive. There is practically no judge in the court, only a trained assessor, who presides in a way which here would be considered undignified, accepts or excludes evidence, and explains to the jurymen any difficult points of law. All substantial power is left to the jurymen, who not only give the verdict on the facts, but pass the sentence also. These jurymen are not casual citizens chosen by chance, but are selected by a system of challenge so elaborate as to fix upon them the eyes of the whole community. It is nearly impossible that under such circumstances the opinionated should not become obstinate, or that a man known to be opposed to capital punishment should consent to suppress his convictions in deference to the law. The result is that in Illinois deliberate and cruel murder is, even when proved to the full satisfaction of the tribunal appointed to try the charge, not a capital offence." Allowing for the natural heat of a Unionist journal in all matters connected with this particular case, the above criticism seems to be a sound one. Indeed, the Illinois law which imposes on the jury the duty not only of finding the facts, but also of applying the law, and which thus vastly increases the chances of a disagreement, is to our mind another illustration of the evil of confusing law and fact,— an evil to which much of the inefficiency of the jury system may be attributed.